

# HOUSE BILL 536

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – Aging)**

Introduced and read first time: February 2, 2010

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Department of Aging – Long-Term Care Ombudsman Program**

3 FOR the purpose of repealing certain powers and duties of the Secretary of Aging;  
4 repealing certain provisions of law relating to the Maryland Long-Term Care  
5 Ombudsman Program and the Maryland Long-Term Care Ombudsman;  
6 reestablishing the Long-Term Care Ombudsman Program in the Department of  
7 Aging; specifying the purpose of the Program; establishing the Office of the  
8 Long-Term Care Ombudsman in the Department; providing for the  
9 appointment of the State Long-Term Care Ombudsman; establishing certain  
10 powers and duties of the Secretary, the State Long-Term Care Ombudsman,  
11 and designated ombudsmen; establishing the qualifications of entities qualified  
12 to be designated as local long-term care ombudsman entities; requiring that an  
13 ombudsman have access to certain facilities, documents, and records; requiring  
14 the Secretary to adopt certain regulations; making it a misdemeanor, subject to  
15 a certain penalty, to willfully interfere with an ombudsman's performance of an  
16 official duty or to retaliate or make reprisals against certain persons; and  
17 generally relating to the Long-Term Care Ombudsman Program.

18 BY repealing

19 Article – Human Services  
20 Section 10-212 and 10-213  
21 Annotated Code of Maryland  
22 (2007 Volume and 2009 Supplement)

23 BY adding to

24 Article – Human Services  
25 Section 10-901 through 10-911 to be under the new subtitle “Subtitle 9.  
26 Long-Term Care Ombudsman Program”  
27 Annotated Code of Maryland  
28 (2007 Volume and 2009 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That Section(s) 10–212 and 10–213 of Article – Human Services of the  
3 Annotated Code of Maryland be repealed.

4 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
5 read as follows:

6 **Article – Human Services**

7 **SUBTITLE 9. LONG–TERM CARE OMBUDSMAN PROGRAM.**

8 **10–901.**

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

11 (B) “LOCAL LONG–TERM CARE OMBUDSMAN ENTITY” MEANS AN ENTITY  
12 DESIGNATED BY THE SECRETARY AND THE STATE LONG–TERM CARE  
13 OMBUDSMAN TO ASSIST IN CARRYING OUT THE DUTIES OF THE PROGRAM.

14 (C) “LONG–TERM CARE FACILITY” MEANS:

15 (1) A NURSING FACILITY, AS DEFINED IN § 19–301 OF THE  
16 HEALTH – GENERAL ARTICLE; OR

17 (2) AN ASSISTED LIVING PROGRAM, AS DEFINED IN §  
18 19–1801 OF THE HEALTH – GENERAL ARTICLE.

19 (D) “OFFICE” MEANS THE OFFICE OF THE LONG–TERM CARE  
20 OMBUDSMAN ESTABLISHED UNDER THIS SUBTITLE.

21 (E) “OMBUDSMAN” MEANS:

22 (1) THE STATE LONG–TERM CARE OMBUDSMAN; AND

23 (2) ANY INDIVIDUAL, WHETHER A PAID EMPLOYEE OR A  
24 VOLUNTEER, WHO IS DESIGNATED BY THE STATE LONG–TERM CARE  
25 OMBUDSMAN AS AN OMBUDSMAN.

26 (F) “PROGRAM” MEANS THE LONG–TERM CARE OMBUDSMAN  
27 PROGRAM ESTABLISHED UNDER THIS SUBTITLE.

28 (G) “RESIDENT” MEANS A RESIDENT OF A LONG–TERM CARE FACILITY  
29 LOCATED IN THE STATE.

1           **(H) “STATE LONG–TERM CARE OMBUDSMAN” MEANS THE INDIVIDUAL**  
2 **APPOINTED BY THE SECRETARY UNDER § 10–903 OF THIS SUBTITLE.**

3 **10–902.**

4           **(A) THERE IS A LONG–TERM CARE OMBUDSMAN PROGRAM IN THE**  
5 **DEPARTMENT.**

6           **(B) THE PURPOSE OF THE PROGRAM IS TO FULFILL THE**  
7 **REQUIREMENTS OF:**

8                   **(1) THE PROGRAM UNDER THIS SUBTITLE; AND**

9                   **(2) THE FEDERAL OLDER AMERICANS ACT, INCLUDING THE**  
10 **REQUIREMENTS OF 42 U.S.C. § 3058G.**

11           **(C) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO**  
12 **CARRY OUT THIS SUBTITLE.**

13 **10–903.**

14           **(A) THERE IS AN OFFICE OF THE LONG–TERM CARE OMBUDSMAN IN**  
15 **THE DEPARTMENT.**

16           **(B) (1) UNLESS THE SECRETARY IS SUBJECT TO A CONFLICT OF**  
17 **INTEREST THAT CANNOT BE REMOVED, THE SECRETARY SHALL APPOINT A**  
18 **STATE LONG–TERM CARE OMBUDSMAN.**

19                   **(2) IF THE SECRETARY IS SUBJECT TO A CONFLICT OF INTEREST**  
20 **THAT CANNOT BE REMOVED, THE SECRETARY SHALL DESIGNATE ANOTHER**  
21 **INDIVIDUAL, WHO IS NOT SUBJECT TO A CONFLICT OF INTEREST, TO APPOINT**  
22 **THE STATE LONG–TERM CARE OMBUDSMAN.**

23           **(C) THE STATE LONG–TERM CARE OMBUDSMAN:**

24                   **(1) SHALL PERSONALLY ADMINISTER THE OFFICE;**

25                   **(2) SHALL HAVE EXPERTISE AND EXPERIENCE IN THE FIELD OF**  
26 **LONG–TERM CARE ADVOCACY, OTHER CONSUMER PROTECTION SERVICES, OR**  
27 **AGING;**

28                   **(3) MAY NOT HAVE ANY CONFLICT OF INTEREST WITH THE**  
29 **POSITION; AND**

1           (4) SHALL, ON A FULL-TIME BASIS, PERFORM DUTIES RELATED  
2 TO THE PROGRAM.

3           (D) THE STATE LONG-TERM CARE OMBUDSMAN SHALL PERSONALLY  
4 OR THROUGH DESIGNATED OMBUDSMEN:

5           (1) IDENTIFY, INVESTIGATE, AND SOLVE COMPLAINTS MADE BY,  
6 OR ON BEHALF OF, A RESIDENT RELATING TO ANY ACTION, INACTION, OR  
7 DECISION BY A LONG-TERM CARE FACILITY, A GOVERNMENTAL ENTITY, OR A  
8 PRIVATE SOCIAL SERVICE AGENCY THAT MAY ADVERSELY AFFECT THE HEALTH,  
9 SAFETY, WELFARE, OR RIGHTS OF A RESIDENT;

10           (2) REPRESENT THE INTERESTS OF RESIDENTS BEFORE  
11 GOVERNMENTAL AGENCIES AND SEEK ADMINISTRATIVE, LEGAL, AND OTHER  
12 REMEDIES TO PROTECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF  
13 RESIDENTS;

14           (3) PROVIDE INFORMATION AS APPROPRIATE TO OTHER  
15 AGENCIES AND THE PUBLIC REGARDING THE PROBLEMS AND CONCERNS OF  
16 RESIDENTS;

17           (4) INFORM RESIDENTS, FAMILY MEMBERS, AND OTHERS ACTING  
18 ON BEHALF OF RESIDENTS ABOUT HOW TO ACCESS THE ASSISTANCE AND  
19 SERVICES OF THE OFFICE AND THE SERVICES AND ASSISTANCE OF OTHER  
20 PROVIDERS OR AGENCIES, INCLUDING LEGAL SERVICES;

21           (5) ENSURE REGULAR AND TIMELY ACCESS TO AND RESPONSE  
22 FROM THE OFFICE;

23           (6) COMMENT ON, FACILITATE PUBLIC COMMENT ON, AND  
24 RECOMMEND CHANGES TO EXISTING OR PROPOSED LAWS, RULES,  
25 REGULATIONS, AND OTHER GOVERNMENTAL POLICIES AND ACTIONS THAT  
26 AFFECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS;

27           (7) PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF  
28 RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS  
29 OF RESIDENTS;

30           (8) PROVIDE FOR THE EDUCATION AND TRAINING OF  
31 OMBUDSMEN;

32           (9) EDUCATE FACILITIES, AGENCIES, AND STAFF MEMBERS  
33 CONCERNING THE RIGHTS AND WELFARE OF RESIDENTS;

1           **(10) PROMOTE THE DEVELOPMENT OF CITIZEN ORGANIZATIONS**  
2 **TO ADVOCATE FOR THE WELL-BEING AND RIGHTS OF RESIDENTS;**

3           **(11) PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF**  
4 **RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS**  
5 **OF RESIDENTS; AND**

6           **(12) CARRY OUT ANY OTHER ACTIVITIES THAT THE SECRETARY**  
7 **DETERMINES TO BE APPROPRIATE OR THAT ARE REQUIRED BY THE FEDERAL**  
8 **OLDER AMERICANS ACT.**

9 **10-904.**

10           **(A) ENTITIES ELIGIBLE TO BE DESIGNATED AS LOCAL LONG-TERM**  
11 **CARE OMBUDSMAN ENTITIES SHALL:**

12           **(1) HAVE DEMONSTRATED CAPABILITY TO CARRY OUT THE**  
13 **RESPONSIBILITIES OF THE OFFICE;**

14           **(2) BE PUBLIC OR NONPROFIT AGENCIES;**

15           **(3) BE FREE OF CONFLICTS OF INTEREST; AND**

16           **(4) MEET ANY ADDITIONAL REQUIREMENTS THAT THE**  
17 **SECRETARY AND THE STATE LONG-TERM CARE OMBUDSMAN SPECIFY.**

18           **(B) (1) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH**  
19 **REQUIREMENTS FOR TRAINING AND DESIGNATING OMBUDSMEN, INCLUDING**  
20 **IN-SERVICE TRAINING.**

21           **(2) THE REGULATIONS SHALL PROHIBIT THE STATE LONG-TERM**  
22 **CARE OMBUDSMAN FROM DESIGNATING AN INDIVIDUAL AS AN OMBUDSMAN**  
23 **UNLESS THE INDIVIDUAL HAS SUCCESSFULLY COMPLETED THE REQUIRED**  
24 **TRAINING AND SATISFIED THE REQUIREMENTS FOR DESIGNATION.**

25 **10-905.**

26           **IN ACCORDANCE WITH REQUIREMENTS OF THE FEDERAL OLDER**  
27 **AMERICANS ACT, AN OMBUDSMAN SHALL HAVE ACCESS TO:**

28           **(1) LONG-TERM CARE FACILITIES AND RESIDENTS;**

29           **(2) THE MEDICAL AND SOCIAL RECORDS OF A RESIDENT, IF:**

1                   **(I) THE OMBUDSMAN HAS THE PERMISSION OF THE**  
2 **RESIDENT OR THE LEGAL REPRESENTATIVE OF THE RESIDENT; OR**

3                   **(II) THE RESIDENT IS UNABLE TO CONSENT AND HAS NO**  
4 **LEGAL REPRESENTATIVE;**

5                   **(3) THE RECORDS THAT ARE NECESSARY TO INVESTIGATE A**  
6 **COMPLAINT IF:**

7                   **(I) A LEGAL GUARDIAN OF THE RESIDENT REFUSES TO**  
8 **GIVE PERMISSION TO ACCESS THE RECORDS;**

9                   **(II) THE OMBUDSMAN HAS REASONABLE CAUSE TO BELIEVE**  
10 **THAT THE GUARDIAN IS NOT ACTING IN THE BEST INTERESTS OF THE RESIDENT;**  
11 **AND**

12                   **(III) THE OMBUDSMAN OBTAINS THE APPROVAL OF THE**  
13 **STATE LONG-TERM CARE OMBUDSMAN;**

14                   **(4) THE ADMINISTRATIVE RECORDS, POLICIES, AND DOCUMENTS**  
15 **OF LONG-TERM CARE FACILITIES TO WHICH THE RESIDENTS OR MEMBERS OF**  
16 **THE GENERAL PUBLIC HAVE ACCESS; AND**

17                   **(5) COPIES OF ALL LICENSING AND CERTIFICATION RECORDS**  
18 **MAINTAINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY**  
19 **OTHER STATE UNIT WITH RESPECT TO LONG-TERM CARE FACILITIES.**

20 **10-906.**

21                   **(A) THE SECRETARY SHALL ADOPT REGULATIONS TO GOVERN**  
22 **CONFLICTS OF INTEREST TO ENSURE THAT:**

23                   **(1) NO INDIVIDUAL, OR MEMBER OF THE IMMEDIATE FAMILY OF**  
24 **AN INDIVIDUAL, INVOLVED IN THE DESIGNATION OF THE STATE LONG-TERM**  
25 **CARE OMBUDSMAN OR A LOCAL LONG-TERM CARE OMBUDSMAN ENTITY, IS**  
26 **SUBJECT TO A CONFLICT OF INTEREST; AND**

27                   **(2) NO OMBUDSMAN OR FAMILY MEMBER OF AN OMBUDSMAN IS**  
28 **SUBJECT TO A CONFLICT OF INTEREST.**

29                   **(B) THE SECRETARY SHALL ADOPT REGULATIONS GOVERNING**  
30 **CONFIDENTIALITY AND PRIVACY OF COMPLAINANTS.**

1 **10-907.**

2 **THE SECRETARY SHALL REQUIRE THE STATE LONG-TERM CARE**  
3 **OMBUDSMAN TO COORDINATE OMBUDSMAN SERVICES WITH:**

4 **(1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;**

5 **(2) THE DEPARTMENT OF HUMAN RESOURCES;**

6 **(3) PROTECTION AND ADVOCACY SYSTEMS FOR INDIVIDUALS**  
7 **WITH DEVELOPMENTAL DISABILITIES AND MENTAL ILLNESSES; AND**

8 **(4) LEGAL ASSISTANCE.**

9 **10-908.**

10 **THE SECRETARY SHALL ESTABLISH AND MAINTAIN A STATEWIDE**  
11 **UNIFORM REPORTING SYSTEM TO COLLECT AND ANALYZE DATA RELATING TO**  
12 **COMPLAINTS AND CONDITIONS IN LONG-TERM FACILITIES AND TO RESIDENTS**  
13 **FOR THE PURPOSE OF IDENTIFYING AND RESOLVING SIGNIFICANT PROBLEMS.**

14 **10-909.**

15 **THE STATE LONG-TERM CARE OMBUDSMAN SHALL SUBMIT AN ANNUAL**  
16 **REPORT ON THE ACTIVITIES OF THE PROGRAM THAT INCLUDES**  
17 **RECOMMENDATIONS OF THE STATE LONG-TERM CARE OMBUDSMAN FOR**  
18 **IMPROVING SERVICES FOR RESIDENTS.**

19 **10-910.**

20 **(A) IN ACCORDANCE WITH 42 U.S.C. § 3058G(J)(1), A PERSON MAY NOT**  
21 **WILLFULLY INTERFERE WITH AN OMBUDSMAN'S PERFORMANCE OF AN**  
22 **OFFICIAL DUTY.**

23 **(B) A PERSON MAY NOT RETALIATE OR MAKE REPRISALS WITH**  
24 **RESPECT TO ANY PERSON WHO FILED A COMPLAINT WITH, OR PROVIDED**  
25 **INFORMATION TO, AN OMBUDSMAN.**

26 **(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**  
27 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**  
28 **\$1,500.**

29 **10-911.**

1           **AN OMBUDSMAN IS NOT LIABLE UNDER STATE LAW FOR GOOD FAITH**  
2           **PERFORMANCE OF OFFICIAL DUTIES.**

3           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4           October 1, 2010.